

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

JOEL DESERTO,)	
Plaintiff,)	CIVIL ACTION FILE NO.:
)	1:22-cv-00096-JRH-BKE
v.)	
)	
AIYAN DIABETES CENTER, INC.)	
And)	JURY TRIAL DEMANDED
SIVAKUMAR JAYABALAN,)	
In his personal capacity)	
Defendants.)	

**PLAINTIFF’S MOTION FOR REPAYMENT OF
COSTS ASSOCIATED WITH SERVICE OF DEFENDANTS AND
COLLECTION OF SUCH**

COMES NOW Plaintiff Joel Deserto showing that he is entitled to and requesting repayment of costs associated with service of the Complaint and Summons to Defendants, Aiyon Diabetes Center, Inc. and Sivakumar Jayabalan as follows:

1. Plaintiff filed his Complaint on July 26, 2022. (Doc.1)
2. Using the *Waiver of the Service of Summons* form provided by the Court, Plaintiff requested that Defendant waive the service of Summons and Complaint.
3. Defendant was sent via United States Postal Service certified mail, return receipt requested, a copy of the Complaint, the Summons, two copies of the waiver

form, and the Court's *Notice of a Lawsuit and Request to Waive Service of a Summons*, along with a self-addressed, stamped envelope.

4. Defendant Aiyan's registered agent received the envelope on July 29, 2022, as evidenced by the postal service documentation hereto attached as Exhibit 1.

5. Defendant Jayabalan received notice of the envelope from the United States Postal Service on July 29, 2022 but failed to pick up the envelope as evidenced by USPS Electronic Delivery Confirmation attached hereto as Exhibit 2 and said envelope was returned on September 6, 2022.

6. Neither Defendant ever responded by signing and returning the waiver.

7. Defendant Aiyan contacted Plaintiff counsel by telephone on August 10, 2022.

8. Defendant Aiyan requested that Plaintiff's counsel send via electronic mail, the summons, complaint, Waiver of Service, etc. to janakinadarajah@gmail.com which was promptly sent within 8 distinct emails, however, Defendants again failed to return the waiver.

9. "If a defendant located within the United States fails, without good cause, to sign and return a waiver requested by a plaintiff located within the United States, the court must impose on the defendant" Fed. R. Civ. P. 4 (A) "the expenses later

incurred in making service; and (B) the reasonable expenses, including fees of any motion required to collect those service expenses.”

10. Defendant lacks good cause for failing to return the waiver.

11. In view that service was never waived and further interaction with the Defendants did not occur, Plaintiff counsel was forced to have the Defendants served by a process server at the address of Defendant’s registered agent and at the individual’s home address.

WHEREFORE, Plaintiff prays that this Court will award the cost of service and the cost of filing this motion in the amount of Eight hundred Sixty Four dollars and fifty cents (\$864.50) to Plaintiff. A proposed Order is attached for this purpose.

Respectfully submitted, this 30th day of September, 2022.

/s/ Beverly A. Lucas
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Attorney for Joel Deserto

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION**

JOEL DESERTO,)	
Plaintiff,)	CIVIL ACTION FILE NO.:
)	1:22-cv-00096-JRH-BKE
v.)	
)	
AIYAN DIABETES CENTER, INC.,)	
And)	JURY TRIAL DEMANDED
SIVAKUMAR JAYABALAN,)	
in his individual capacity,)	
Defendants.)	

CERTIFICATE OF FONT COMPLIANCE
REQUIRED BY LOCAL RULE 7.1D AND SERVICE

In accordance with Local Rule 7.1D, I hereby certify that the foregoing was prepared with one of the font and point selections approved by the Court in Local Rule 5.1B. Specifically, it was prepared with Times New Roman, 14 point.

I further certify that I placed a copy of the foregoing PLAINTIFF’S MOTION FOR REPAYMENT OF THE COST ASSOCIATED WITH SERVICE OF DEFENDANTS AND COLLECTION OF SUCH affixing proper postage with the United States Postal Service to the following pro se Defendants at the following postal addresses:

Aiyan Diabetes Center, Inc. (principal office)
482 Fury’s Ferry Road

Martinez, Georgia 30907

And

Sivakumar Jayabalan
594 Medinah Drive
Augusta, Georgia 30907

And

Registered Agents, Inc.
(Registered Agent for Aiyan Diabetes Center, Inc.)
300 Colonial Center Parkway Suite 100N
Roswell, Georgia 30076

This 30th day of September, 2022

BY: /s/Beverly A. Lucas
Beverly A. Lucas
Georgia Bar No. 427692
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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

JOEL DESERTO,)	
Plaintiff,)	CIVIL ACTION FILE NO.:
)	1:22-cv-00096-JRH-BKE
v.)	
)	
AIYAN DIABETES CENTER, INC.,)	
And)	JURY TRIAL DEMANDED
SIVAKUMAR JAYABALAN,)	
in his individual capacity,)	
Defendants.)	

[proposed] ORDER

The Court having read and considered the above PLAINTIFF’S MOTION FOR REPAYMENT OF THE COST ASSOCIATED WITH SERVICE OF DEFENDANTS AND COLLECTION OF SUCH and for good cause shown hereby **ORDERS** that Plaintiff’s Motion is **GRANTED** and Defendant is to pay to Plaintiff the amount of Eight Hundred Sixty Four Dollars and Fifty Cents (**\$864.50**) within **10 days** from the date of this Order.

SO ORDERED this ____ day of _____, 2022.

Brian K. Epps
United States Magistrate Judge